IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11512 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASIF @ ASHRAF @ GANDHARO S/O SULEMANBHAI @ SALIMBHAI SANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR MIG MANSURI for Petitioner

MR SAMIR DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner was detained as a dangerous person under the order of the Commissioner of Police, Rajkot City dated 29.6.2000 and he is presently at Central

Prison, Baroda.

#. Challenging this order aforesaid learned counsel for the petitioner raised manifold contentions. But this petition deserves acceptance only on one contention it is not necessary to give details of all the contentions, discuss and decide.

#. It is not in dispute that none of the respondents has filed reply to the Special Civil Application.

#. It is contended that statement of witnesses recorded in the criminal complaint registered against petitioner and which are made use of to book him as a dangerous person, copies thereof have not been supplied to the petitioner. Copy of the representation submitted against the detention order is on the record of this petition and therefrom I find that the petitioner has made the demand of the copies of the statement of the witnesses recorded under Section 161 of the Cr.P.C. in Criminal Complaint Nos.I 41/2000, I 42/2000, I 205/2000, I 241/2000, I 243/2000 and I 245/2000. These complaints are relied upon by the detaining authority to form subjective satisfaction to detain the petitioner as a dangerous person. These documents are certainly vital documents and non-supply thereof vitiates this order itself. It is not the case of the respondents that the copies of these documents have been supplied to the petitioner. Otherwise also it is to be taken that copies of these documents were not supplied to the petitioner as the respondents have not filed reply to the special civil application. It is also not stated in the grounds of detention.

In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 26.9.2000 is quashed and set aside. The petitioner Asif @Ashraf @Gandharo s/o Sulemanbhai @Salimbhai Sandhi, the detenu, at present in Central Prison, Baroda be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.1,000= as the costs of this petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the

petitioner made a statement on being put by the court that he has charged Rs.1,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate which charge lesser fees. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This is not only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat for not of its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter on the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is not recovered from those officers its House may not be corrected.

(S.K.Keshote, J.)

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